
(1966) 07 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 794 of 1965

Mahin	Vs	APPELLANT
The Collector of Customs and Central Excise and others		RESPONDENT

Date of Decision : 19-07-1966

Acts Referred:

Customs Act, 1962 — Section 112

Citation : (1966) KLJ 1117

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : K. Chandrasekharan and T. Chandrasekhara Menon, for the Appellant; M.U. Isaac, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Mathew, J.—A show cause notice dated 10-6-1964 was issued to the petitioner by the Assistant Collector of Customs and Central Excise, Cochin-3, proposing to confiscate 258 wrist watches. Ex. P-1 is the notice. The notice also stated why action should not be taken against the petitioner under Sec. 112 of the Customs Act, 1962, for being knowingly concerned in the offence of unauthorised importation of the aforesaid watches. The petitioner submitted his explanation on 15-6-1964 (Ex. P-2). The Collector of Customs and Central Excise, the 1st respondent, passed Ex. P-3 proceedings by which he confiscated the watches, and imposed a penalty of Rs. 2,500/- on the petitioner for being knowingly concerned in the commission of the offences. The petitioner appealed to the 2nd respondent. As the appeal was not accompanied by deposit of the penalty the appeal was dismissed on that ground. The case against the petitioner was that he was concerned in the importation of 258 wrist watches from Singapore to Cochin through Mr. M. K. S. Nair, who at the relevant time was the Chief Petty Officer in I. N. S. Thrisul, that the said watches were entrusted to Mr. M. K. S. Nair at Singapore by the petitioner and his associate Mr. Abdul Rahiman for the purpose of the said import, that the deal was arranged by Mr. Syed

Mohammed who is an ex-Chief Petty Officer of the Indian Naval Service and under whom Mr. M. K. S. Nair had formerly worked as a subordinate, that pursuant to the arrangement the petitioner and his associate Mr. Abdul Rahiman came over from Singapore to Ernakulam, where they were met by their friend Mr. Syed Mohammed, for the purpose of taking over the aforesaid watches from Mr. M. K. S. Nair, that the petitioner and Abdul Rahiman for that purpose travelled by the same plane from Singapore to Madras, and by the same train from Madras to Ernakulam and stayed in the same hotel at Ernakulam, where Mr. Syed Mohammed had already taken his room, that Sri M. K. S. Nair brought the said watches from Singapore to Cochin in I. N. S. Trisul according to the plan and that the said watches were seized from the possession of Mr. M. K. S. Nair when he was coming out of the vessel for the purpose of handing over them to Mr. Abdul Rahiman.

2. The main submission of counsel for the petitioner were that Ex. P-3 order is not based upon any legal evidence, that the statements of the persons relied on in Ex. P-3 were taken behind the back of the petitioner, and that copies of these statements were not given to the petitioner, nor were those persons examined in the enquiry let alone in the presence of the petitioner.

3. In Ex. P-1 a summary of the statements given by persons from whom statements were taken was set out and that clearly showed that the petitioner was concerned in the conspiracy to import the watches without payment of the excise duty. So the materials before the 1st respondent were disclosed to the petitioner and he was given an opportunity to rebut the truth of the statements given by these persons. The petitioner never said that he wants any of these persons who gave statements to be cross-examined. In *Kanda v. Government of Malaya* 1962 A. C. 322 at 337 Lord Denning said:

If the right to be heard is to be a real right.....it must carry with it a right.....to know the case....against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

I think, the petitioner was given an effective opportunity of being heard. He was given a summary of the statements made by the persons in Ex. P-1 notice and there was effective opportunity to contradict or correct. But counsel for the petitioners said that the person who gave statements should have been examined in the presence of the petitioner and since the statements were made behind the back of the petitioner and since they were not formally introduced into the evidence the statements should not have been relied on for entering the verdict against him. Counsel submitted that when oral evidence is relied on by an authority exercising quasi-judicial functions, it is necessary that the witnesses should be examined in the presence of the delinquent and that in this case since no witness was examined in the presence of the petitioner and no copy of the statements made by the witnesses was given to him, the enquiry was vitiated.

4. In *State of Mysore Vs. S.S. Makapur, . Venkitarama Aiyar J.*, speaking for the court said that broadly the requirements of the principles of natural justice are, that a party should have the opportunity of adducing all relevant evidence on which he relies, that no material should be relied on against him without his being given an opportunity of explaining them, and that if these are satisfied an enquiry is not open to attack on the ground that the procedure for taking evidence in court of law is not followed. That was a case where the question was whether clause 8 of Sec. 545 of the Bombay Police Manual offends the principles of natural justice. The learned Judge after referring to the observation of Lord Loreburn L. C. in *Board of Education v. Rice* 1911 A. C. 179, 182 and considering the previous rulings of the Supreme Court on the subject came to the conclusion that it does not so offend. In coming to the conclusion the learned Judge commented upon a passage in *I. L. R. 1954 Bombay 915* where Chagla C. J. is reported to have said:

Even assuming that a statement of such a witness is furnished to the Government servant, it is a sound rule that courts of law follow and which even domestic tribunals should follow that all evidence must be given in the presence of an accused person and in the presence of a person against whom action is taken. It is one thing to make a statement behind the back of a person--it is entirely a different thing to make a statement in front of the Court or a domestic tribunal and in the presence of a person against whom you are going to make serious charges.

By saying that the purpose of examination in the presence of the party against whom an enquiry is made is sufficiently achieved when the witnesses who have given prior statements are called, and their statements put to them after giving copies of the statements to the party with an opportunity for cross-examination of the witnesses by the party. Counsel submitted that in this case since the prior statements were not put to the witnesses in the presence of the petitioner, the statements were not introduced into the evidence, and therefore the statements should not have been relied on. I do not think that, absent statutes or rules, the principles of natural justice required that the persons who gave statements should have been called and their statements put to them in the presence of the petitioner, in order that those statements might be used as evidence. In the application of the principle of natural justice that no man shall be condemned without his being given an opportunity of being heard, to a given situation, the nature of the authority conducting the enquiry, the gravity of the subject matter of the enquiry, the status or capacity of the persons against whom the enquiry is conducted, the degree of formality traditionally associated with the particular type of enquiry, have all to be considered.

5. So far as assessment proceedings under the Salestax and Incometax Acts are concerned, they are held to be quasi-judicial in character; and yet all that is required in a best judgment assessment is that the materials gathered by the Department should be put to the assessee, and he be given an opportunity to

rebut them. No case has done to the extent of holding that the persons from whom the materials are gathered should be examined in the presence of the assessee in order to make the materials admissible in evidence. The ultimate question to be asked and answered is whether the party had an effective opportunity of being heard, having regard to all the relevant consideration. In *Russel v. Duke of Norfolk* (1949) 1 All. E. R. 109, 118 Tucker L. J., observed:

There are in my view no words which are of universal application to every kind enquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth...

In this case the substance of the statements given by the persons from whom statements were taken was communicated to the petitioner. The statements were thus formally introduced into the evidence. The petitioner knew what evidence had been given against him. And he had an opportunity to contradict or correct the evidence, either by asking for cross-examination of the persons who gave the statements or by examining other persons. He demanded neither the one nor the other. I cannot, therefore, in the circumstances of the case, say that the petitioner was not given an effective opportunity of being heard.

6. Counsel then said that oral evidence untested by cross-examination is hearsay, and that there was not even a modicum of legal evidence to substantiate the finding that the petitioner was guilty of the offence. I think, the opportunity for cross-examination was sufficient to make the statements admissible in evidence and that even if the statements contained only hearsay evidence the 1st respondent was not unjustified in relying upon them. I further think that so far as a quasi-judicial enquiry by an administrative authority is concerned, the strict rules of evidence against admission of hearsay evidence are not applicable. No pretense is made of applying the rules of evidence in many hearings conducted by private arbitrators, private associations or labour arbitrators. The rules of evidence to a large extent fail of their professed purpose. To the extent to which the rules of evidence are the peculiar product of the jury system, they are inapplicable to an administrative tribunal. In informal fact-finding many rules of evidence have no place, but the absence of formal hearing does not in itself render all rules inapplicable. To the extent that the rules of evidence are the product of the adversary system, they are not applicable to non-adversary administrative proceedings. The absence of contest effects the applicability of the strict rules of evidence. A law suit in court is not entirely an enquiry into truth. The rules of contest often make the result hinge not on the truth, but on the astuteness of counsel. The failure of counsel to employ the procedural devices necessary to winning his case is frequently decisive. Many rules of evidence are predicated on the adversary system. Wigmore says a rule of evidence not evoked is waived. (See Wigmore Evidence, 3rd Edn. page 321). A waiver may have nothing to do with the truth or falsity of

an asserted fact, but according to the contest rules the evidence may be considered because the opponent of the party who offers it has waived the rule. The Judge need not inquire whether the rules should be waived to find the truth. Not only must objection be made to inadmissible evidence, but it must be made at the right time, and counsel must specify the right reasons for his objection; if the objection is late, if the wrong reason is given, or if the objection is general instead of being specific, the evidence will be admitted and considered. But in a non-adversary proceeding in which the tribunal is under an affirmative duty to find out the truth, and in cases in which parties are unrepresented by counsel and are unable to help themselves, the requirements must be different. Although evidence rules of some kind are needed for all fact-finding proceedings, those rules which rest heavily upon the adversary system of courts are ill-adapted for many types of quasi-judicial proceedings. The rules of evidence in such proceedings must take into account the affirmative obligation resting upon the administrative agencies to take the initiative in aggressively finding out the truth. Judicial action normally will not be taken until some party moves the court to action. The burden of gathering evidence and presenting it rests on the parties, not on judges. But in many quasi-judicial proceedings, on the other hand, the burden of finding the truth rests on administrative officers. Failure of counsel must not be decisive. The reasons for admitting or excluding evidence must be based upon the desire not merely to settle a controversy but to find the truth. In addition to non-adversary proceedings, which are usually of this character, the agency must carry the burden in many adversary proceedings. Sometimes this results from the theory that the agency must represent a public interest not otherwise represented. The rules of evidence for such proceeding should reflect the importance or unimportance of the subject matter and considerations of economy. The rules of evidence to be applied in any proceeding before an administrative authority must be selected in part with regard to the degree of precision needed in the particular fact finding. Some inquiries require maximum precision, others only a rough approximation. Where precision is needed, rules of evidence must be more exacting. Where approximation suffices, less reliable information may be admitted.

7. In *Regina v. Deputy Industrial Injuries Commissioner, Ex. parte Moore* 1965--2W. L. R. 89 the question arose whether with reference to industrial injuries the medical opinions concerning a deceased in two previous cases before other Commissioners, could be admitted in evidence. It was held that even assuming that the Deputy Commissioner had treated the medical opinions given in the previous cases as independent evidence in the case before him, he had not erred in law in so doing, that proceedings before industrial injuries commissioners and Deputy commissioners are judicial proceedings although not governed by the strict rules of evidence applicable to ordinary civil trials that the only limitation on the discretion of the commissioner or the deputy commissioner is as to the procedure which he should adopt, in that it should be one in accordance with the principles of natural justice, that since both parties and their

witnesses had had full opportunity of commenting upon the medical opinions expressed in the previous cases, there had been no breach by the deputy commissioner of the rules of natural justice in treating those opinions as evidence in the case before him. It was further held that the rules of natural justice require such a commissioner to base his decision on evidence, namely, information, whatever its source, of some probative value, and to listen fairly, where a hearing has been requested. At page 113 Pearson L. J. observed: No doubt the procedure has to be reasonable, and, when there is a hearing, it has to be a well-conducted hearing. But the deputy commissioner would not render his procedure unreasonable, nor his hearing ill-conducted, merely by admitting as evidence something which according to the strict rules of evidence for court proceedings would be inadmissible. The rules of evidence are in some respects artificial and unsatisfactory and may require the exclusion of evidence which is highly reliable and credible as in the recent case of *Mvres v. Director of Public Prosecutions*--1964-3 W. L. R. 145. In civil proceedings in court the requirements of the rules of evidence are frequently waived by express or tacit consent in the interests of justice and convenience. The deputy commissioner's discretion to determine the procedure under regulation 26 (1) (b) must be wide enough to enable him, in a proper case, to admit good evidence notwithstanding that there might, according to the rules of evidence be some technical objection to its admissibility.

Diplock L. J. said at page 116:

In the context of the first rule, "evidence" is not restricted to evidence which would be admissible in a court of law. For historical reasons, based on the fear that juries who might be illiterate would be incapable of differentiating between the probative values of different methods of proof, the practice of the common law courts has been to admit only what the Judges then regarded, as the best evidence of any disputed fact, and thereby to exclude such material which, as a matter of common sense, would assist a fact-finding tribunal to reach a correct conclusion.....

These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer but he may take into account any material which as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.

In determining the admissibility or inadmissibility of hearsay and multiple hearsay evidence, many factors other than those encompassed by the traditional rules must be taken into account. The nature of some information is such that first-hand reporting is necessary; other information may be reasonably reliable even though the reporting is hearsay. Learned Hand J., said in *KLRS. v. Remington Rand* 2d Cir. 1938 that:

hearsay may support a finding if in the end the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs." (See "Cases on Administrative Law" by Davis page 502)

Lord Reid in *Myres v. Director of Public Prosecutions* 1964-3 W. L. R. 145. 154 said:

This is a highly technical point, but the law regarding hearsay evidence is technical and I would say absurdly technical.

When a choice must be made and no direct or reliable evidence is available, grasping at straws may sometimes be justifiable as evidenced by the many cases on temporary permit, where the materials relied on to make out the temporary need are often nothing but hearsay evidence. Generally speaking probably the best rule of evidence for administrative authorities exercising quasi-judicial functions would be that propounded by Thayer.

that nothing is to be received which is not logically probative of some matter requiring to be proved; and that everything which is thus probative should come in unless a clear ground of policy or law excludes it.

The public policy behind the administered statute may often need to be taken into account in determining whether evidence should be admitted or excluded and in determining whether or not evidence should be relied on. Important in this connection is the deeply rooted psychological process concerning proceedings in the nature of criminal prosecution. Possibly criminal prosecutions and their counterparts in the administrative process are a separate category to which special rules of evidence should apply. Such proceedings have been traditionally surrounded with safeguards that apply. Such proceedings have been traditionally surrounded with safeguards that reach further than those provided for other proceedings. The traditions of justice and the psychology of parties, however, are potent influences that cannot rightly be ignored. Making the exclusionary rule stricter for a criminal case than for other cases may be difficult to justify analytically, because in both the objective is to find the truth. The question of the nature of evidence admissible in a labour court was considered in 6 J. I. L. I. (1964) 36, and there, the conclusion of the learned author was that the provisions of the Evidence Act should be followed. Whether that is a desideratum may be debatable. It would be begging the question if we say that the finding of an administrative tribunal must be supported by legal evidence, and therefore, the provisions of the Evidence Act as regards hearsay must be observed in admitting evidence before the tribunal; and if there is only

inadmissible evidence tested by these provisions, the finding will not be supported by legal evidence. But what exactly is legal evidence before an administrative tribunal is the real question. According to the rulings of the Supreme Court the provisions of the Evidence Act are not as such applicable to a proceeding before an administrative authority exercising quasi-judicial function. If that be so, are the provisions of that enactment relating to the non-admissibility of hearsay evidence and the exception thereto to be strictly followed by the tribunal or authority? The trend of the speeches of the law lords in *Mvres v. Director of Public Prosecutions* should decide the choice. If the provisions in the Evidence Act relating to the non-admissibility of hearsay evidence and the exceptions thereto are "absurdly technical", why extend their applicability to proceedings before tribunals or authorities not otherwise bound by those provisions by a process of judicial legislation.

I think that having regard to all the circumstances, even if hearsay evidence was admitted and acted upon, that would not vitiate the finding of the 1st respondent that the petitioner was guilty of being concerned in the offence. Besides, I think, there is direct evidence in the statement of Mr. M.K.S. Nair to implicate the petitioner, and even if some inadmissible evidence have been let in, that would not vitiate the finding. I dismiss the petition with costs.